

REMARKS/ARGUMENTS

In response to the Restriction Requirement of October 6, 2004, applicants by their attorney elect Group II, consisting of claims 14 and 15, with traverse. As the ultimate species, applicants select compound E5A 29, shown bridging pages 26 and 27 of the specification. The generic formula is found in amended claim 14 and the species in amended claim 15. Applicants reserve the right to rejoinder of product claims and/or species claims under an allowable genus, in accordance with MPEP 809.03.

Claims 14 and 15 find support in original claim 1 and on page 27, respectively.

All of the claims are predicated on the discovery that there is a modulating sequence present in the EPO-R to which a number of different small synthetic molecules are able to bind and modulate the activity of the EPO-R. Group II is said to be unrelated to Group I under the premise that "one could modulate EPO-R activity 'present as a cell membrane component' by administering PKC inhibitors. Alternatively, the combinations of Group I are said to be useful as molecular weight markers. Referring to the latter statement, it is submitted that the utility must be a substantial utility, mixed melting points are not considered a utility and a molecular weight marker should be similarly excluded. It is submitted that the alternative utility should be one that is not shared by substantially all substances.

As for the modulation by PKC inhibitors, it is not understood how that is relevant. The focus should be on the binding of the small molecule to the modulating sequence. With the small molecule bound to the modulating sequence, it is speculation by the Examiner that PKC inhibitors would have an effect. Without some certainty as to alternative methods for modulating a cell in which an agonist or antagonist is bound to the EPO-R, it is submitted that the Examiner has not fulfilled his burden in providing alternative compounds to achieve the subject method of Group II.

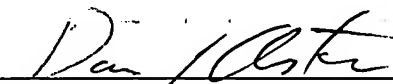
The difference between Group I and Groups III-V is that the combination is created, rather than being claimed *per se*. Thus, the products of Group I are produced by the methods of Groups II-V. Where the claims of one group are the product of the other Groups, such claims should be considered together.

It appears that a preliminary amendment, dated 9/24/2004, adding claims 23-25 was not brought to the attention of the examiner prior to issuance of the present restriction requirement. If this amendment has not been entered, advisement of Applicants' attorney is respectfully requested.

The Examiner is respectfully requested to withdraw the restriction requirement, examine claims 1-25 and enter the above amendments to provide claims directed to the specific species that has been elected. If the Examiner believes that the prosecution of the subject application can be expedited by a telephonic interview, the Examiner is requested to call the undersigned attorney.

Respectfully submitted,

PETERS, VERNY, JONES &
SCHMITT, LLP

By 
David J. Aston, Reg. No. 28,051
Tel.: (650) 324-1677
Fax: (650) 324-1678